IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5253 OF 2006.
IN
FIRST APPEAL NO.3083 OF 2006.

Mrs.Hilda Seqiera & others. ... Applicants.
Versus.
Patrick A.Pavery and others. ... Respondents.

Shri S.M.Sakhardande i/by Shri A.S.Malvankar for the Applicants.

Shri V.R.Tripathi for the Respondents Nos.2, 4 and 5.

CORAM : ABHAY S.OKA, J.

DATED : 18th January, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. The prayers in this application read thus:

(a) Operation of the decree and judgment dated October 16, 2006 passed by the City Civil Court, Mumbai in BCCC SC Suit No.6387 of 1993 be stayed pending the hearing and final disposal of the above Appeal.

(b) Pending the hearing and final disposal of the above appeal the Respondents, their agents and/or anyone claiming through the respondents being restrained from using the walkway in excess of 2 ft. and shown on the sketch at Exhibit B to the civil application and be prevented from using

the same for any vehicular traffic and/or from preventing the Appellants from having/putting up their family Cross beyond 2 ft. walkway as stated in the Commissioner’s report at Exhibit "A" hereto.

(c) Ad-interim relief in terms of prayer "a" and "b" above be granted.

(d) For costs of and incidental to the Civil Application.

(e) For such other and further reliefs as the nature and the circumstances of the case may require.

2. The Applicants are the Defendants in the suit filed by the Respondents. The suit filed by the Respondents has been decreed in terms of prayer clause (a) which reads thus:

(a) That the Defendants by themselves and through their agents, servants and representatives be permanently restrained by an order and injunction of this Hon’ble Court from interfering in any manner with

> the Plaintiff's use and enjoyment of the way from the house of the Plaintiffs at plot at Survey No.311 Hissa No.21, Village Kale Kalyan, Santacruz (E), Bombay 400 055 to the road beyond the building thereon and/or from erecting or putting up any Cross in the way of the said excess as shown by blue dotted line and read line or at the place marked by (x) to the sketch plan Ex."D" to the plaint and/or from at the place marked by green thereon and/or from causing any obstruction to the Plaintiffs, their servants, visitors and friends to use the said access in any manner without due process of law."

As of today the Applicants are unable to show that they have any right in respect of the strip of land which is marked as Marshy land on the plan annexed to the plaint. The Advocate for the Applicants states that on the portion of the property which is the subject matter of prayer (a) of the suit, there was a Cross erected by the Defendants which was washed away in the monsoon during the last year. He states that by way of interim relief, the Applicants should be allowed to construct the Cross. As of today the Applicants are unable to show that they have right, title and interest in respect of the portion

of the property which is the subject matter of prayer (a) of the suit. Unless the Applicants secure permission of the real owner of the property, it is obvious that the Applicants cannot erect the Cross.

3. In view of this position, as of today, the prayers made in this Civil Application cannot be granted. The Application is rejected. However, it will be open for the Applicants to make a proper application before this Court after they secure permission to erect the Cross.

Judge.